

In general, absent a market failure, competition policy will not interfere with a firm's decision to attempt to be more efficient through vertical integration. Thanks to the on-going spectrum auction, the structure of the CMRS market will guarantee consumers more choice in their selection of a local wireless access provider than they now have in long distance carriers.³² But "equal" access will work to distort and defeat the growth of competition.

This is the irony of "equal" access: designed to promote long distance competition in a monopoly marketplace, "equal" access has *no* pro-competitive effect on the level of wireless competition. In fact, "equal" access actually has anticompetitive effects in both local and long distance markets.

The facts demonstrate that where "equal" access is imposed on cellular carriers, customers pay more. When Bell Atlantic Mobile purchased the non-wire line cellular company in Arizona, that company had no "equal" access requirement. Yet because of its bloodline, Bell Atlantic Mobile was forced by the MFJ to tear down the facilities connecting Tucson and Phoenix, and customers were forced to pay a long distance carrier for calls between cities that, previously, had been "local" calls.

E. "Equal" Access Raises Consumers' Bills

"Equal" access in the wireless industry is already needlessly costing consumers hundreds of millions of dollars in charges for "long distance" service.³³ Imposing "equal" access industry-wide will cost consumers hundreds of millions of dollars more in unnecessary charges.

³² In contrast to the three (or three and a half) major long distance carriers, there will be at least six CMRS providers (two cellular carriers, at least one ESMR licensee, two 30 MHz MTA-based PCS carriers, and one 30 MHz BTA-based PCS carrier) in every local CMRS market by the time equal access could be imposed on all CMRS providers.

³³ See Memorandum of the Bell Companies in Support of Their Motion for a Modification of Section II of the Decree to Permit Them to Provide Cellular and Other Wireless Services Across LATA Boundaries, filed in Civil Action No. 82-0192, *United States v. Western Electric Co., et al.*, (D.D.C. June 20, 1994), at 3, 24-25 and affidavits referenced therein.

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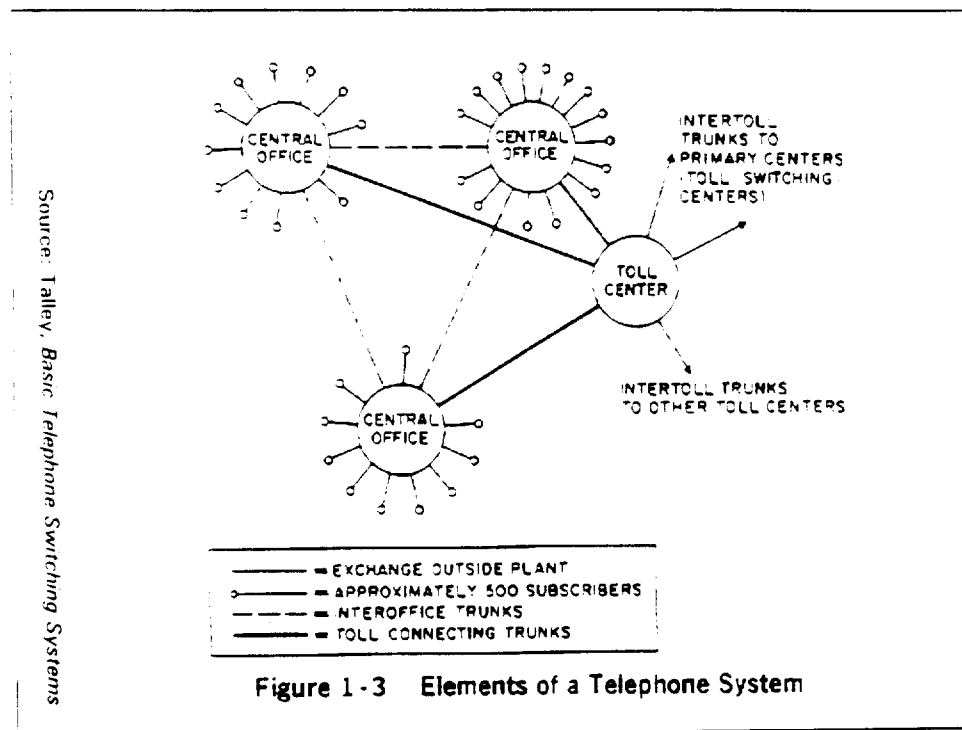
Where cellular carriers can treat "long distance" as part of their basic service, customers pay less. Right here in Washington, a call to Baltimore is charged long distance rates on the landline network, but it is a local call on wireless. Wireless carriers are in a position to expand that kind of competitive benefit to consumers. Many wireless companies, for instance, offer toll-free wide area calling, or special programs of unlimited long distance at no additional charge, for a flat monthly fee.

Company Name	Toll-Free Wide Calling Areas	Nationwide Long Distance
AirTouch Cellular		Free Nationwide Long Distance for New Subscribers
Atlantic Cellular	New Hampshire, New York, Vermont	\$15 a month Nationwide Calling
CommNet Cellular	Colorado, Idaho, Iowa, Montana, North Dakota, South Dakota, Utah, Wyoming	
GTE MobilNet	California, Florida, Indiana, Tennessee, Texas	
Horizon Cellular	Kentucky, West Virginia	\$9.99 a Month Nationwide Calling
Rural Cellular Corporation	Minnesota, South Dakota	
Vanguard Cellular	Maine, New Hampshire, West Virginia	\$9.95 a Month Nationwide Calling
Wireless One Network	Florida, Ohio, Pennsylvania, West Virginia	

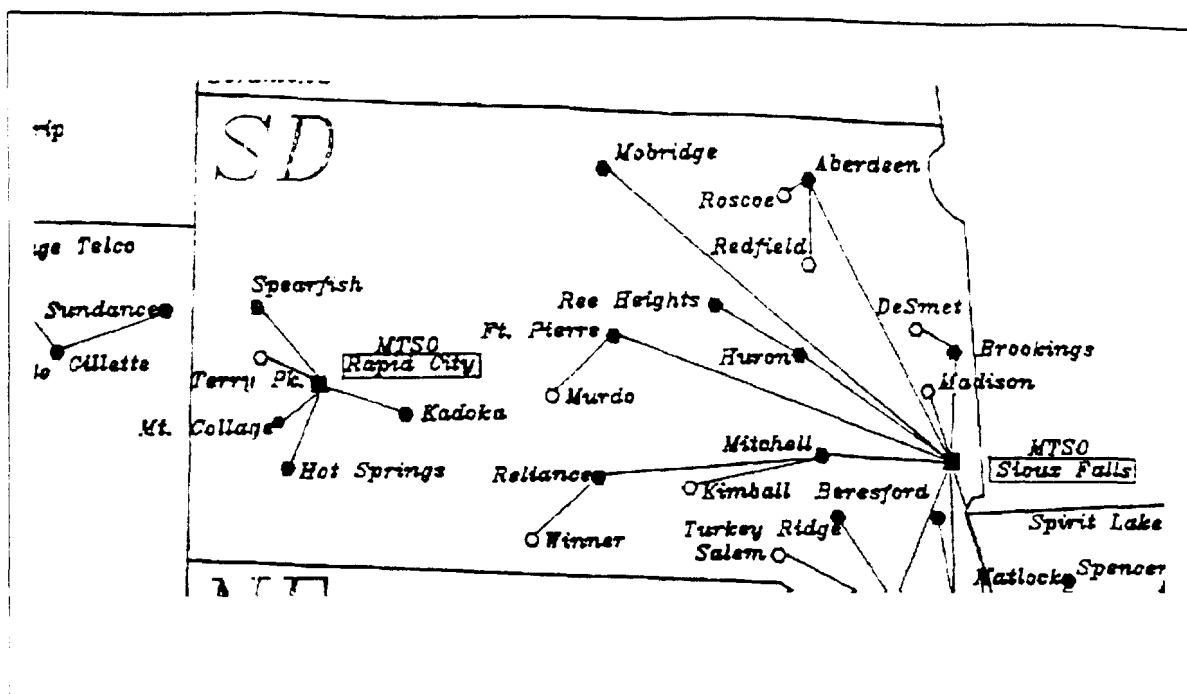
F. "Equal" Access Relates to Yesterday's Technology

As previously explained, the architecture of the wireless infrastructure blurs the distinction of "long distance" as a separate service. In order to understand this issue it is necessary to understand the evolution of telecommunications technology which wireless represents.

When wireline telephony was introduced over 100 years ago, the technology of the day required a multiplicity of switchboards (and later automatic switches) to connect one phone with another. Prior to the invention of repeaters, voice messages would only carry short distances. Thus, because of technology limitations, telecommunications remained a very local service. The desire to interconnect these local exchanges ultimately led to the creation of separate long distance capacity, with separate charges. A call would go from the local switch to a long distance carrier for delivery to another local switch and then to the customer.



The infrastructure built by the wireless industry to serve the needs of its mobile customers blurs the distinction between "local" and "long distance" calls. Here, for instance, is a map of how the switching is done in South Dakota by CommNet Cellular, Inc.



If a wireless subscriber in Mobridge, SD, wants to order a pizza from a few blocks away the call is hauled to Sioux Falls where it is switched and then hauled back to Mobridge. All in an infinitesimal amount of time. This apparently "long distance" call actually reflects the superior economies of the architecture of wireless telecommunications.

Now consider a call from Mobridge to Sioux Falls. Previously, wired technology dictated that the call was long distance -- but is it any more? CommNet's wireless infrastructure has made long-distance and long distance charges a relic of yesterday's technology.

Now consider a long distance carrier -- enjoying increasing rates in recent years -- it is not too happy about these technological advances which provide customers with a more attractive service. The solution: Have the government impose "equal" access on all wireless carriers. That way, the long distance carriers can take advantage of an idea that was developed to encourage long distance competition in a bottleneck wireline local exchange environment, and use it to **discourage** long distance entry and competition from **competitive** wireless companies.

G. "Equal" Access is Anti-New Technology and Services

The "equal" access paradigm has the additional flaw that it simply does not work with certain new technologies and wireless services. "Equal" access does not work with such services as satellite-provided CMRS, with some IS-41 features (such as "Look-Ahead Busy" functions), and new non-voice services, including wireless data services

like Cellular Digital Packet Data (CDPD), as the Department of Justice acknowledged in its Consent Decree and Competitive Impact Statement on the McCaw-AT&T acquisition.³⁴

In fact, **"equal" access threatens innovation.** The whole world is going digital for voice, video and data applications -- and a preferred method of delivery is "packetized data." The wireless industry has developed a new packet data standard -- CDPD -- which is now being implemented. CDPD is a computer-based service that is not designed for an "equal" access world. CDPD is a "connectionless" service -- meaning that the packets of data travel along different paths to their destination where they are reassembled under the Transport Control Protocol/Internet Protocol (TCP/IP). Connectionless data services such as CDPD, unlike voice service, have no deterministic call duration. Therefore, packet networks, unlike the Public Switched Telephone Network (PSTN), are not "equal" access compliant nor capable. Billing is dependent on the data transmitted, not the duration of the call made.

The services the Department of Justice has identified are just the tip of the iceberg. "Equal" access will mean that the FCC will be involved in passing judgment on every new wireless service and technology, delaying introduction for years until it completes its review on the application or non-application of "equal" access rules on a service- and technology-specific basis. Such regulatory impediments are clearly inconsistent with the FCC's obligation to encourage the availability of new technologies.³⁵

H. "Equal" Access Means Huge Regulatory and Administrative Burdens

Regulatory burdens imposed by the FCC may be warranted where there is a clear marketplace need for regulation. In this case, where there is no need, it is quite clear that imposing "equal" access requirements on CMRS providers will impose significant regulatory burdens that outweigh any benefits.

First, the FCC must conduct a line-drawing proceeding to define where equal access obligations begin. While there are any number of choices -- (1) LATAs, (2) LATAs as modified for BOC-affiliated cellular systems by order of the District Court for the District of Columbia, (3) cellular MSAs and RSAs, (4) state lines, (5) SMR service contours, and (6) Rand-McNally MTA's and BTA's -- they are all, by necessity, arbitrary

³⁴ See Competitive Impact Statement, filed in Civil Action No. 94-01555, *United States v. AT&T Corp. and McCaw Cellular Communications, Inc.*, (D.D.C. August 5, 1994), at 21-22.

³⁵ Congress imposed this obligation when it added Section 7 to the *Communications Act*. See 47 U.S.C. Section 157.

in their application, and needlessly discriminatory in their application across CMRS services, which the FCC has decreed should be permitted to compete on the basis of regulatory parity despite disparate licensing schemes. Ultimately, if governed by the MFJ principles for "equal" access, the goal of such service boundaries must be to divide local and long distance calling. While the FCC certainly can develop "equal" access boundaries, it will require multiple rulemakings and, as described above, result in a lessening of CMRS competition.

Nationwide, there is a maze of boundaries, made up of 194 LATAs, 734 MSAs and RSAs, 493 BTAs, and 51 MTAs. In those 1,472 service areas, there are at least 3,818 licenses -- not counting the regional and nationwide narrowband PCS, paging, SMR and ESMR licenses. Coming up with a scheme that takes account of these widely different service areas, and the ability of wireless companies to develop innovative new services and to link service areas using satellites and other arrangements, would tax the ability of a design genius -- and cripple the ability of competitors in the marketplace to adopt new technologies, and deliver innovative new services to their customers.

Second, with long distance service providers seeking to integrate their services with CMRS services, the FCC continually will be called upon to determine the rules and limits of an "equal" access provider's duty of non-discrimination. Each new and pro-competitive bundle of service offerings will bring regulatory challenges from rival long distance providers who will use the FCC's administrative procedures to try to thwart the availability of a new service rather than attempt to match it in the marketplace.

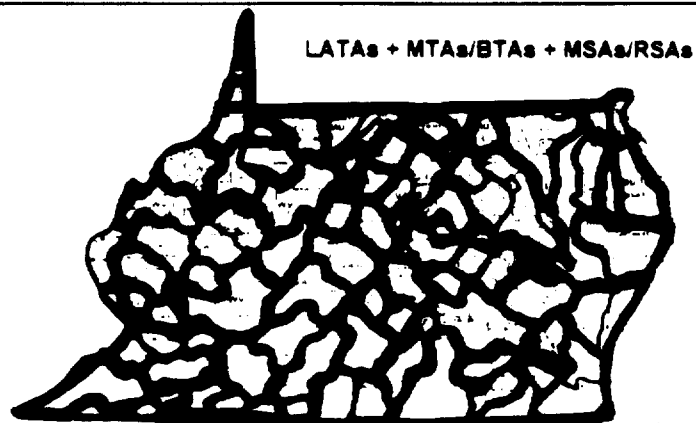
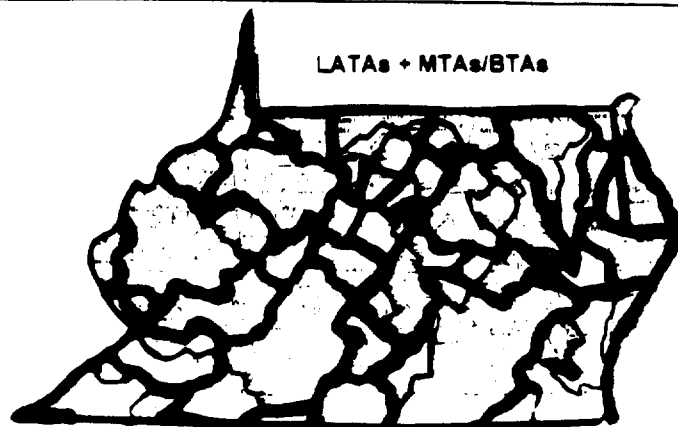
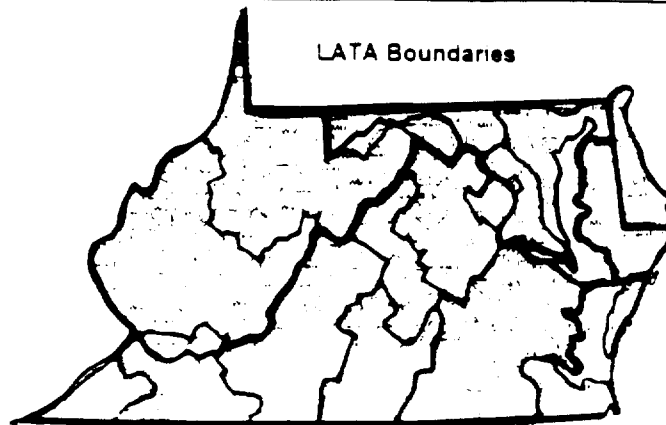
Third, as the FCC knows from its decade of experience with LEC-provided "equal" access, even a successful "equal" access regime generates complaints, most recently highlighted in the FCC's action against carriers' "slamming" customers from one long distance carrier to another.

From June 1993 through June 1994, when the cellular industry had an average of 16,175,312 customers nationwide, the FCC received only 245 customer complaints. That is a customer satisfaction record any industry would envy. The FCC is inviting customer confusion and unhappiness with rules that will further complicate a customer's selection of new service providers and service options, and needlessly frustrate carriers' efforts to meet their customers' needs by integrating their service offerings.

Ironically, in the face of all the trouble involved in creating and imposing "equal" access on wireless carriers, we have no evidence that consumers like it or want it. Surveys indicate consumers have not demonstrated much interest in "equal"

access.³⁶ And this makes sense, since **consumers save money without wireless "equal" access.** Not a single wireless carrier that was not legally obligated to do so has ever offered "equal" access to its customers. In a business as fiercely competitive as cellular, if offering "equal" access responded to a customer need, carriers would have done so years ago.

"Equal" Access boundaries will balkanize service areas and harm consumers.



³⁶ See Comments of AirTouch Communications, CC Docket No. 94-54, filed September 12, 1994, at 4-6.

6. *Attacking the Wireless Paradigm:* Current Universal Service Funding is Anti-Competitive

The benefits of competition must be universally available. The wireless industry supports the premise of universal service. In fact, wireless is increasingly becoming a means of providing universal service, as well as a big contributor to funding it.

A universal service fund, supported by and open to all telecommunications providers, must be a policy goal. At the same time, however, the hidden subsidies which have subsidized universal service over the years must be eliminated.

In a perverse way, the manner in which we subsidize universal service today is anti-competitive. This is because every wireless carrier pays an "access fee" to be able to interconnect with the LEC. These fees range from three to ten cents per minute -- and the LEC makes no such payment to the wireless carrier when traffic is terminated on the wireless network.

Consider an example of how unreasonable access fees hinder competition. For purposes of this example, let us assume that the access fee is three cents a minute. The typical residential customer uses 1400 minutes per month and pays around \$25.00 for landline service. At a three cent access fee the wireless carrier has a starting cost of \$42.00 to support a similar volume of calls. Simply put, you cannot compete when you are paying three cents for something your competitor is sourcing for around half a cent.

This disproportionate access fee and the failure to pay mutual compensation has been historically justified as a part of the "social contract" to provide universal service by funding high-cost basic service through charges on some services which significantly exceed the LECs' costs. In a competitive environment, such anti-competitive disadvantages cannot be sustained.

In order to have a sustainable universal service system and competition there must be a different system for paying for universal service. So long as a system of hidden subsidies for universal services remains in place, the policy goal of universal service to all Americans will be the greatest impediment to a competitive telecommunications market.

7. *Attacking the Wireless Paradigm:* Investment Rules Discourage International Growth

The ability of U.S. wireless companies to compete internationally is limited because many countries impose on U.S. businesses the same foreign investment restrictions which the U.S. government imposes on these countries' citizens.

Section 310(b) of the Communications Act currently provides that foreign entities are restricted to (1) no more than 25 percent interest in a holding company which owns or controls common carrier or broadcast radio licenses, and (2) no more than 20 percent direct ownership of a license.

Congress should adopt a common-sense national reciprocity policy in applying this section to CMRS licenses, authorizing the FCC to permit foreign investment in U.S. CMRS licenses based upon the investment restrictions imposed upon U.S. companies in the would-be investors' home country.

Such a national reciprocity policy will provide incentives for eliminating foreign investment restrictions in other nations. France, for example, waives foreign investment limits for investors whose home market offers reciprocal opportunities for French firms. Similar provisions exist in the European Union procurement legislation.

Ultimately, such a policy will promote greater investment in the U.S. and opportunities for U.S. companies abroad.

8. *Attacking the Wireless Paradigm:*

Numbers are a Critical Resource Demanding Fair Administration

At the threshold of the competitive paradigm is the assignment of telephone numbers. With the rapid growth and expansion of wireless telecommunications, demand is increasing for telephone numbers to accommodate new customers and services. **Two out of every three new numbers are currently being assigned to wireless telecommunications.** Telephone numbers are a national resource as scarce as the spectrum which carries wireless signals.

Yet, this essential component of competition is administered by one of the competitors -- the local exchange companies and their affiliate Bellcore. **All parties, wired and wireless alike, agree that responsibility for administering and assigning "telephone" numbers should be assigned to a new, independent, non-governmental entity with a neutral governing board open to all carriers.** The entire industry -- wireline and wireless -- has, after years of good faith efforts, developed guidelines for central office code assignment. These consensus guidelines provide for fair and equitable "first-come, first-served" assignment of telephone numbers. All that is needed is an independent party to oversee the process.

Since 1991 the FCC has had before it a petition to remove this responsibility to an independent body composed of representatives from all affected parties.³⁷ **The time has come for the FCC to act.** The FCC moved quickly in developing rules for scarce spectrum: numbers are equally scarce and there can be no competition without them.

The FCC's failure to act has resulted in frequent fights between LECs and wireless carriers. Recently, for instance, the LEC in several markets has proposed to assign a wireless-only area code and to require that all wireless numbers currently in use be **returned** to the LEC.

Since it costs approximately \$100 to reprogram a cellular phone, in some markets this decision would have cost the cellular carriers as much as \$75 million. The cost to consumers would have been much worse: reprinting stationery, business cards and brochures which, because of this unilateral decision of the LEC, would become suddenly worthless.

Another example of the problems created by the FCC's failure to act is that the states are stepping into the void. The Connecticut Public Utilities Commission, for instance, has indicated that it may order the re-assignment of all wireless customers' numbers to wireline telephone customers, as well as an entirely new and separate numbering plan for all wireless customers. This would result in a \$70 million expense for Connecticut cellular companies and subscribers.

These two examples indicate that, with about 47 million wireless telecommunication users nationwide -- including nearly 25 million cellular customers, over 20 million paging subscribers, and 1.8 million SMR users -- the FCC's failure to act for four years is a \$10 billion crisis waiting to descend on consumers and CMRS carriers. The FCC should act with dispatch by assigning the responsibility for administering and assigning telephone numbers to the proposed independent, non-governmental entity, composed of representatives from all affected parties. This move will defuse the crisis.

Moving Forward Under the Wireless Paradigm

Because policymakers had the foresight to create an environment for wireless that is both competitive and less regulated than other telecommunications services, both consumers and the industry have benefited. The wireless industry has flourished under minimal regulation. Prices are falling, new and innovative services have been developed, and investment continues, resulting in both jobs and a nationwide wireless

³⁷ See National Association of Regulatory Utility Commissioners, Petition for Notice of Inquiry Addressing Administration of the North American Numbering Plan, filed September 26, 1991.

telecommunications network. **Cellular companies have invested over \$16 billion in providing wireless services nationwide, and have created over 200,000 jobs over the past ten years.**

Growth, innovation, investment, jobs and falling prices are the hallmarks of the wireless paradigm. Yet, at the very height of its success, the wireless paradigm -- competition in lieu of regulation -- is being threatened by competitors' and short-sighted regulators' proposals of regulatory structures and burdens that are inconsistent with competition and its benefits.

- Competition is thwarted and consumers are forced to pay higher prices when even a few state governments continue to regulate rates and services, forcing erstwhile competitors to compete through lawyers rather than in the market.
- Consumers are denied service and jobs are not created when local governments prohibit competitors from building the facilities necessary to offer competition.
- Wireless subscribers are subjected to a new tax when local governments extort hidden taxes in return for zoning permission.
- Competition is thwarted and consumers are forced to pay higher prices when competitors seek to impose structures designed for a monopoly market on a competitive market.
- Consumers are denied service and jobs are not created when government policy discourages the investment necessary to build competitive facilities.
- Competition is thwarted and consumers are forced to pay higher prices when one set of wireless carriers has imposed on them across-service boundary restrictions simply because of their parentage.
- Competition is thwarted and customers are forced to pay more when the essential component of competition -- telephone numbers -- are controlled by a competitor.
- Competition is thwarted when hidden subsidies are imposed by the wireline carrier as substitutes for a needed universal service fund.
- Investment and competition are thwarted and international growth is precluded when investment restrictions are placed on foreign investors, and foreign governments retaliate in kind.

What is at stake are as many as one million new jobs, \$50 billion in investment capital, and tens of billions of dollars of cost savings to consumers -- all over the next 10 years.

The new wireless paradigm -- harnessing competition and minimal regulation together -- broke with the traditions of the past, and created an industry capable of responding quickly to consumer demand and technical developments. This new paradigm works for the consumer, and it works well. Applying the heavy hand of regulation to this competitive industry will restrict entry, derail innovation, and constrain market forces -- all of which will only harm the consumer.